

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No. 53/2009

Jodhpur this the 22nd day of March, 2013

[Reserved on 20.3.2013]

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)

Om Prakash Bansal S/o Late Shri Tulsi Ram Bansal, aged about 46 years, R/o Type-III Quarter, Ist Floor, Income Tax Colony, Shastrinagar, Bhilwara, at present employed on the post of LDC (under suspension) in the office of Additional Commissioner of Income Tax, Shastrinagar, Bhilwara (Raj).

(Through Adv. Mr. J.K. Mishra)

Versus

1. Union of India through Secretary, Ministry of Finance, Department of Revenue, Government of India, North Block, New Delhi.
2. Additional Commissioner of Income Tax, Bhilwara Range, Bhilwara (Raj).
3. Shri Raj Pal Singh, Additional Commissioner of Income Tax, Bhilwara Range, Bhilwara.
4. Commissioner of Income Tax, Jaipur Road, Ajmer.

.....Respondents

(Through Adv. Mr. Varun Gupta)

ORDER

Per: Justice K.C. Joshi :

This Application has been preferred under Section 19 of the Administrative Tribunals Act, inter alia, challenging the Chargesheet dated 26th November, 2008 (Annex.A/1) issued by the Additional Commissioner of Income Tax, Bhilwara and all the subsequent orders prejudicially affecting him, with all the consequential -benefits.

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2. As averred in the application, the applicant was initially appointed as a Lower Division Clerk in 1987 in the Office of Income Tax at Sirohi. He was later on posted at different places like Jodhpur, Udaipur, Kota, Ajmer and lastly at Bhilwara in the year 2007. It has been pleaded that no regular incumbent was posted as Additional CIT, Bhilwara since April 2008 and it is respondent No. 3 who was given the current charge and he attends office both at Bhilwara on Tuesday and Wednesday. As regards the applicant, his work was being appreciated and therefore he was issued certificates for efficient working.

3. A FIR was lodged on 10th June, 2002 due to disproportionate assets of the applicant and thereupon, a Challan has also been filed under Sections 13, 121 read with Section 13 111 (E) of the Anti Corruption Act, 1988 (hereinafter referred to as "the Act of 1988") as also under Sections 109, 120-B read with 420, 468, 471 of Indian Penal Code before the Special Court of Central Bureau of Investigation Jodhpur. On 18.03.2003 a criminal case has been registered against him and his spouse Smt. Indu Bansal. In September 2007, the 3rd respondent was given additional charge of Additional CIT Bhilwara. He, suddenly, became indifferent with the applicant and stopped assigning any job during May to June 2008 about which the applicant informed respondent No. 4; this irked the 3rd respondent. Thereby respondent No. 3 started harassing the applicant in multiple ways including non-assignment of work and threats of spoiling his ACRs. Not only this it has also averred in the OA that his life will be made miserable and thereupon

instructions to watch over the applicant were ordered. In this regard, despite EL application, cross marks were made in the attendance register and consequent to this, he has represented vide Annexs. A/3 and A/4 to the respondent-department. It is submitted that the 3rd respondent started pressurizing him to pay him Rs. One lakh for subside the CBI case but, he did not agree.

4. The respondent No. 3 under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 [hereinafter referred to as "the Rules") issued a chargesheet for major penalty on 26th November, 2008 containing three charges which are reproduced below :

"Article – I That the said Shri Om Prakash Bansal while functioning as LDC during the period 24.09.1987 to 11.6.2002 in various offices of Income-tax Department in Rajasthan has failed to maintain absolute integrity within the meaning of Rule 3(1)(i) of C.C.S. Conduct Rules.

Article – II That during the aforesaid and while functioning in the aforesaid offices, the said Shri Om Prakash Bansal failed to maintain devotion to his duties within the meaning of Rule 3 (1) (ii) of C.C.S:Conduct Rules.

Article – III That during the aforesaid period and while functioning in the aforesaid offices, the said Shri Om Prakash Bansak was indulged in such activities which are unbecoming of a Govt. Servant within the meaning of Rule 3 (1) (iii) of C.C.S. Conduct Rules."

5. It has been emphatically stated by the applicant that the charge memo Annex.A/1 did not even contain file/dispatch number. The Chargesheet contains the events from 1987 when he born on roll of the Department and the allegations at Sl.Nos. C,D and E of imputations in respect of Article – I are the same as at Sl.Nos. C,D and E of Article-II and grounded on the same facts which was the subject matter of the charges in criminal case before the CBI. In sum, it has been pleaded that the allegations have merely been repeated and multiplied to aggravate the gravity of the charges.

6. The 3rd respondent got irked with the applicant's attitude as he did not chose to pay even 50,000/- as demanded by him for the CBI case, rather, the applicant chose to report the matter to the higher authorities vide his letter dated 16.12.2008. The 3rd respondent, it is submitted in the OA, started harassing the applicant. The applicant sought time to file his defence. However, an order by speed post regarding his suspension dated 29th January, 2009 (Annex.A/8) was served despite his being very much on duty. The applicant on 2nd February, 2009 (Annex.A/10) gave his defence denying the allegations. Shri Mool Chand Sharma, ITO was appointed as Inquiry Officer in a mechanical manner without fulfilling the norms. The applicant has pleaded in his OA that the chargesheet has been issued in 2008 i.e. after lapse of 6-21 years of the alleged incident and that too, without any explanation regarding delay. The applicant has specifically submitted that the respondent No. 3 is biased and he tried to make the dry bones of the history to life and is frivolous when in most of the sub-imputations of misconducts the respondent No. 3 himself was a witness, vague and repeated imputations of charges have been leveled without application of mind. Thus, the 3rd respondent cannot act as a disciplinary authority. The applicant, therefore, prays that the impugned Chargesheet at Annex.A/1 be quashed and set aside on grounds narrated hereinabove and on the ground of delay at the thresh-hold.

7. The respondents have filed their detailed reply to the application and submitted that applicant has not exhausted other remedies as defined in Section 20 of the Central Administrative Tribunal's Act and has not

appeared before the Inquiry Officer, therefore, the application filed by the applicant is premature and it should be dismissed because the applicant has not even appeared before the Inquiry Officer. It is wrong to contend that since April 2008, no regular incumbent is posted as Additional Commissioner of Income Tax at Bhilwara as respondent No. 3 is holding the regular and substantive charge of Bhilwara range since September 2007 though it is in addition to his charge as Additional Commissioner of Income Tax, Chhitorgarh. The respondent No. 3 is discharging all the functions of Additional Commissioner of Income Tax, Bhilwara Range in respect of Income Tax Act and all other duties assigned to him under the various acts. The additional charge has wrongly been interpreted as current charge by the applicant. The normal sanctioned strength of Additional Commissioner of Income Tax/Jt. Commissioner of Income Tax with a Commissioner is three while under the Commissioner of Income Tax, Ajmer only one Additional Commissioner of Income Tax has been posted and charge of rest of two Ranges are being held additionally and one of those charges is Bhilwara Range which is being controlled by the respondent No. 3. The respondents have stated that the applicant is not discharging his duty satisfactorily and on the other hand, complaints have been received against him from public. It is wrong to contend that respondent No. 3 stopped assigning any job to him and he has never passed any order regarding posting. Applicant has made frivolous and baseless allegations against respondent No. 3 and the latter never threatened the applicant and even no cross mark in attendance register was marked as this was

the duty of the Drawing and Disbursing Officer. On the other hand, applicant himself absented from the office habitually. As regards the money, respondent No. 3 never pressurized the applicant as alleged nor he has any right to do so to ask for any money which is not legally recoverable from any person in the capacity of discharging his duties and he has no power to subsidize the case pending before the CBI Court which is not under respondent No. 3.

8. The submission regarding despatch number is a clerical omission and it has been entered in the dispatch register. The act of the applicant are covered by Rule 3 (1) (i), 3(1)(ii) and 3(1)(iii) on the basis of documents. If a Government servant commits such acts which are covered by all the sub rules provided in Rule 3 (1) then is to be charged by the relevant sub rules, therefore, the action of the respondent NO. 3 for inclusion of the acts in Article I, II and III is as per Rules. It is pleaded by the respondents that a misconduct having documentary evidence can be covered by Article I, II and III simultaneously as provided in CCS Rule (3). The averments in the OA regarding witness of respondent No. 3 in Article I (L) and (M) and Article II (I) and (J) and Article III (M) and (N) are not correct. Article II (J) refers other facts than claimed by the applicant under para 4.8.

9. The respondents have further stated that the inquiry proceedings initiated under Rule 14 of the Rules of 1965 cannot be closed by imposing one of the minor penalties after due consideration of the

defence submitted by the accused officer and it is obligatory to hold a formal inquiry before coming to a decision about the quantum of penalty, hence, once the charges were denied the respondent No. 3 had no option but to start inquiry. Further, it is contended by the respondents that on denial of the charges by the applicant on 27.1.2009, inquiry officer was appointed on 28.1.2009 and there is no question of making any mind but as stated above, respondent No. 3 was bound to institute inquiry on denial of the charges as per rules. Regarding the appointment of inquiry officer the very first para of letter dated 4.2.2009 issued to the applicant forms part of the application as Annex.11 clearly mentions that the inquiry officer has been appointed, therefore, applicant's averment of non-communication of appointment of inquiry officer is not admitted.

10. As regards the delay, respondents have specifically contended that the misconduct of the applicant up to 2008 has been included in the impugned chargesheet and there is no delay on their part in issuance of chargesheet belatedly. The charges leveled against the applicant are based on documents and he was found in possession of such documents which were not expected to be in his possession.

11. The applicant has also filed a rejoinder. It has been stated therein that the averments made in reply are wrong. It is stated that the applicant has never been asked anything about Annexure R/3 and R/4 and he had no knowledge about the alleged complaints. It is stated in the rejoinder that the disciplinary proceedings can be initiated on the basis of original

records i.e. primary evidence and on the basis of secondary evidence. The very Annex.R/1 makes it evident that the 3rd respondent while holding the post of Additional CIT at Chhitorgarh on regular basis, was given the additional charge of the post of Additional CIT Bhilwara till further orders. This therefore obviously means that he was holding the current charge at Bhilwara. There is no ambiguity in the language of the order and its plain reading itself makes this fact clear. Duration of holding the current charge is immaterial and the status of the individual would not change by holding current charge for a long time. It has been further pleaded that the 3rd respondent has deliberately clubbed number of items just to entangle the applicant on one pretext or the other and his mala fide is evident from the very fact that applicant's total service career is investigated like some investigating agency. If name of a person is not shown as a witness in the list of witnesses issued on behalf of the department, he can be called in the inquiry by the delinquent employees if there is relevancy of his statement with the case. However, in the instant case in number of charges he has either issued the orders alleged to have not been obeyed or else he is prime witness. The respondent No. 3 therefore cannot thus act as a judge and prosecutor in his own cause. It has also been stated that the inquiry officer as well as the 3rd respondent have flouted the stay order and the applicant thereafter filed a C.P. before this Tribunal and mala fide of the said respondent can be inferred from his subsequent actions. The submission of respondent No. 3 justifying delay on the pretext of receiving the documents from the CBI in 2007 is denied because most of the charges relate to past.

Therefore, the applicant contended that the OA should be allowed by setting aside the impugned orders passed by the respondent-department.

12. Heard both the counsels.

13. The main argument of the counsel for the applicant is that the Additional Commissioner (Respondent No.3) was posted as Additional Commissioner of Income Tax at Chhitorgarh and was having only current charge of Additional Commissioner, Bhilwara and, therefore was not competent to issue any chargesheet. In this context, he has cited the judgment reported in AISLJ Vol. VIII 2002 388 - [*Jai Ram Khatik & Anr. Vs. Union of India and Ors.*] wherein the provisions of Para 48 of the P&T Manual have been extracted and interpreted as below :-

"Para 48. An officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full fledged incumbent of the post but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament or Rules, Regulations and Bye-Laws made under various articles of the Constitution."

A bare reading of the above provisions makes it clear that an officer, who has been appointed to perform the normal current duties in addition to his own duties in respect of the office which is laying vacant, though can exercise administrative or financial powers, he is not authorized to exercise statutory powers.

14. He further drew attention to the fact that the respondent No. 3 would also be a witness himself in the proceedings and therefore, does not have the authority to initiate and prosecute disciplinary proceedings.

The allegations in the chargesheet are old, long drawn, repetitive and varying matters are clubbed together to make them appear very grave. Apart from that a criminal case is pending on the same matters and there is no justification for holding a concurrent disciplinary inquiry. It was also alleged by the counsel for the applicant that respondent No. 3 is prejudiced against the applicant because the applicant refused to pay him money for the CBI case and he started harassing him and did not give him any duties and further went to the extent of initiating disciplinary proceedings. Thus, the disciplinary proceedings are void and mala fide and need to be quashed.

15. The counsel for the respondents, per contra argued, that as is evident from Annex. R/1/1 Shri Rajpal Singh had taken over the charge as Additional Commissioner, Income Tax Range Bhilwara on 24.09.2007 in addition to his charge as Additional Commissioner Income Tax Range Chhitorgarh. This was in pursuance of the order dated 19.09.2007 (Annex.R/2) which clearly states that Shri Rajpal Singh Additional CIT, Chhitorgarh will hold the additional Charge of Additional CIT Bhilwara Range till further orders. In view of these orders, the respondent No. 3 was fully competent to act in all capacities as Additional Commissioner of Income Tax Range Bhilwara and therefore the issuance of chargesheet dated 26.11.2008 suffers from no legal infirmity. The position brought out in the judgment of *Jai Ram Khatik & Anr. Vs. Union of India and Ors.* regarding Para No. 48 of the P&T Rules, does not apply in this case because the respondent No. 3 was holding the additional charge and not the current charge, as

wrongly mis-interpreted by the applicant. He further stated that there is no basis to the charge made by the applicant that the respondent No. 3 was prejudiced against the applicant and no proof has been given to show that the respondent No. 3 tried to extract illegal gratification for closing the CBI case which was pending against the applicant. The chargesheet has been issued on the basis of violations of rules and regulations by the applicant and in accordance with the procedure laid down in the disciplinary rules. As far as the departmental inquiry being taken up simultaneously with a pending criminal case, it was argued it is a settled law and there are catena of Hon'ble Supreme Court judgments which lay down that this is permissible.

16. We have given our thoughtful consideration to the pleadings and the arguments of the counsels. From a perusal of Annexs. R/1 and R/2 it is clear that respondent No. 3 was holding the additional charge of Additional Commissioner, CIT Bhilwara and it will not be correct to interpret it as a current charge, therefore, the interpretation of Para 48 of the P&T Rules quoted in the case supra, does not apply mutatis mutandis in this case and the issuance of the chargesheet does not appear to suffer from any legal infirmity on this ground.

17. As far as the question of mala fide or prejudices of the respondent No. 3 is concerned, no documentary evidence is there to indicate that any illegal gratification was demanded. Therefore, this ground advanced by the counsel for the applicant does not carry any weight. As far the

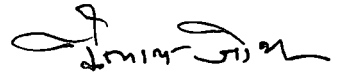
departmental inquiry being taken up simultaneously with a pending criminal case, this cannot be accepted as a valid argument of the counsel of applicant, as the same has been upheld in several judgments of the Apex Court.

18. Looking to the entire facts and circumstances and considering the grounds raised in the application in our considered opinion, no case is made out to quash the chargesheet or any other further proceedings.

19. In the above circumstances, the O.A. is not allowed and the respondents are permitted to carry on further the disciplinary proceedings from the stage it has reached, in accordance with law and rules. There are no order as to costs.



(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER



(K.C. JOSHI)
JUDICIAL MEMBER

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